

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 3428 of 2007(G)

**AGAINST THE ORDER IN IA 10209 2005 IN
OS.2060/2005 of I ADDL.M.C.,THRISSUR**
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**PETITIONER/ plaintiff IN O.S.2060/05,
PETITIONER IN IA.10209/05:**

**N.K.KUTTAN @ MADHU, AGED 65 YEARS,
S/O.KUNJUNNY, NANDIKKARA HOUSE,
MULLAKKARA DESOM, P.O.MANNUTHY, THRISSUR TALUK.**

BY ADV. SMT.K.RAJANI

**RESPONDENT/ DEFENDANT NO.1 IN O.S.2060/05
RESPONDENT IN I.A. 10209/05:**

**N.K.RADHA, AGED 58 YEARS,
D/O.KUNJUNNY AND W/O.C.V.MADHAVAN,
MINI NIVAS, CHAKKOTH HOUSE, P.O.ARIMBUR,
THRISSUR.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

- EXT. P1 COPY OF REPLICATION DATED 26.11.05.
- EXT.P2 COPY OF PETITION IN I.A.10209/05 DATED 30.11.05 FILED BY THE PETITIONER.
- EXT.P3 COPY OF THE OBJECTION FILED BY THE DEFENDANT TO I.A.10209/05 DATED 17.2.06.
- EXT.P4 COPY OF ORDER DATED 23.9.06 IN I.A.10209/05 PASSED BY THE 1ST ADDL. MUNSIFF, THRISSUR.
- [True copy]

P.A. to Judge.

M.N. KRISHNAN, J.
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W.P.C. NO. 3428 OF 2007
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Dated this the 29th day of May, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the order passed in I.A.10209/05 of the Addl. Munsiff Court, Thrissur. The suit is one for partition and injunction. As per the contentions in the written statement it is averred that the defendant has got exclusive right over the property by virtue of a document of the year 1982. The plaintiff would aver that only through the written statement he has come to know about the said document and therefore has filed an application seeking amendment of the plaint and for a declaration that the document is null and unsustainable in law. The said request was turned out by the learned Munsiff on the ground that it is barred by limitation.

The question when the plaintiff actually came to know about the document is a matter which can be considered in the suit after both parties adduce evidence. The Court will not be in a position to find out the actual date of knowledge while considering the application for amendment. However, in a suit of this nature when the defendant is claiming exclusive right over property, an

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opportunity should be given to the plaintiff to formulate the reliefs in accordance with law. Therefore, the amendment application is allowed and the order passed by the learned Munsiff is set aside. However, it is made clear that the question of limitation regarding the declaration sought for has to be considered independently by the Court and the defendant is permitted to file additional written statement raising contentions refuting the allegations in the amended plaint.

The writ petition is disposed of as above.

M.N. KRISHNAN, JUDGE.

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